

EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 --oOo--

4 In Re:) Case No. LA13-15130-SK
5)
6 GGW BRANDS, LLC,) Los Angeles, California
7) Wednesday, April 10, 2013
8 Debtor.) 10:30 a.m.
9)

10 In Re:) Case No. LA13-15132-SK
11)
12 GGW DIRECT, LLC,)
13)
14 Debtor.)

15 In Re:) Case No. LA13-15134-SK
16)
17 GGW EVENTS, LLC,)
18)
19 Debtor.)

20 In Re:) Case No. LA13-15137-SK
21)
22 GGW MAGAZINE, LLC,)
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24 Debtor.)

25 HRG RE MOTION FOR ORDER
DIRECTING THE APPOINTMENT OF A
CHAPTER 11 TRUSTEE

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1 LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 10, 2013 10:30 AM

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3 (Call to order of the Court.)

4 THE COURT: Matter number 37, GGW Brands. It's
5 also matter numbers 38, 39 and 40.

6 MS. LAW: Good morning, your Honor. Dare Law on
7 behalf of the United States Trustee.

8 THE COURT: Good morning, Ms. Law.

9 MR. PAGAY: Good morning, your Honor. Malhar
10 Pagay, Pachulski, Stang, Ziehl and Jones, together with
11 Mitchell Langberg of Brownstein, Hyatt, Farber and Schreck,
12 together for Wynn Las Vegas.

13 THE COURT: Thank you. How do you pronounce your
14 last name?

15 MR. PAGAY: Pagay, P-A-G-A-Y.

16 THE COURT: Pagay. Thank you.

17 MR. PAGAY: Thank you, your Honor.

18 MR. YASPAN: Robert M. Yaspan, Y-A-S-P-A-N,
19 attorneys -- proposed counsel for the debtor in possession.

20 THE COURT: Okay. We're here on Wynn's motion for
21 order directing appointment of a Chapter 11 trustee.

22 I'd like to hear from Ms. Law first. Even though
23 the U.S. Trustee filed a motion to dismiss yesterday, the
24 Court -- excuse me, a motion to appointment a trustee
25 yesterday, the Court did review that motion to appointment a

1 Wynn also filed an ex parte application for order
2 authorizing Wynn Las Vegas to file under seal Argyle Media
3 license agreement related to motion for order directing the
4 appointment of trustee.

5 On April 8th, the Court granted the ex parte
6 application. A review of the email exchange highlighted by
7 Wynn as well as the document that was filed under seal
8 substantiates Wynn's contention that Francis attempted to
9 change the licensor with Direct TV from GGW Direct to Argyle
10 Media Sales, LLC.

11 Wynn asserts that Francis's intent was to transfer
12 these rights from GGW Direct, an entity subject to the alter
13 ego litigation to Argyle, an entity that was not. Debtors
14 do not explain why Francis sought to transfer the rights
15 from GGW to Argyle.

16 Instead, debtors contend that courts will only
17 appoint trustees in cases where the debtor will continue
18 misconduct. Debtors state that there is no evidence
19 presented of any misconduct pre-petition or post-petition
20 and even if there were pre-petition conduct, in the past,
21 debtors have a new management team since the time of the
22 alleged mismanagement.

23 For this proposition and for the fact that debtors
24 claim a trustee should not be appointed, they rely on In re
25 General Oil Distributors and In re Sundial Limited.

1 Here, the Court finds there is sufficient cause to
2 appoint a Chapter 11 trustee pursuant to 1104(a)(1). This
3 finding is based on evidence of Francis's control over
4 debtors while he was the manager of Pablo Holdings which was
5 through late October, early November of 2012, as well as
6 what the Court perceives as Francis's continued control over
7 debtors since that time when Dale was purportedly promoted
8 to manager of Pablo Holdings.

9 The evidence is clear that despite debtors'
10 protestations to the contrary, that the trustee of the trust
11 controlled debtors, Francis was in complete control of
12 debtors through at least early November of 2012.

13 Pablo Holdings' operating agreement demonstrates
14 that the manager of Pablo -- who was Francis, not the member
15 as asserted repeatedly by debtors -- had absolute unfettered
16 discretion and complete control over Pablo Holdings, which
17 in turn controlled GGW Brands, the holding company of the
18 other GGW entities.

19 Further, although debtors seek to distance
20 themselves from Francis and claim that he often loudly
21 voices opinions or recommends to stamp on others regarding
22 whether someone should be hired or fired, the truth is that
23 at least through early November Francis had the ultimate say
24 in hiring and firing.

25 Francis alone determined how much he would be

1 paid, which was limited only by debtors' income.

2 From a review of his personal AmEx bills, it is
3 beyond dispute that GGW funds were used to pay Francis's
4 personal expenses. He also used GGW assets to pay for
5 lawyers who represented him personally.

6 Although Kluger testified that when he was first
7 engaged by debtors, he researched whether Francis's personal
8 legal fees were properly deducted and he concluded that most
9 of the legal expenses incurred were legitimate business
10 expenses. Because in most cases the assets of the companies
11 were being protected, that does not alter the analysis.

12 The implication is that some of the expenses might
13 not have been considered legitimate expenses or that Kluger
14 did not research all of the expenses.

15 Further, debtors' assertion that Francis did not
16 have any control over the GGW entities is belied by the fact
17 that he negotiated with and terminated vendors on behalf of
18 the GGW entities and that is evidence related to the Direct
19 TV emails and the Molten emails.

20 Further, the timing of Francis's attempt to change
21 the Direct TV licensor from GGW Direct to Argyle Media Sales
22 further supports the Court's belief that a trustee is
23 warranted.

24 On 7/20/2012, the Nevada state court issued a
25 preliminary injunction in the alter ego litigation which

1 continued to freeze 2,000,000 in funds claimed to belong to
2 GGW Brands and/or Direct which were held in David Houston's
3 client trust account. Five days later, Francis attempted to
4 change the Direct TV licensor from GGW to Argyle Media
5 Sales, LLC.

6 Wynn also alleges that the attempted transfer to
7 Argyle should arouse suspicion about the nature and purpose
8 of any payments or transfers of assets from any of the
9 debtors to Argyle.

10 Wynn asserts that Argyle is a cancelled California
11 LLC that was registered with the Secretary of State under
12 Tim's name. Wynn does not present any evidence supporting
13 this assertion and none is in the record.

14 Wynn also highlights that Aftergood signed the
15 agreement purportedly between Direct TV and the GGW Brands
16 where Mr. Francis was trying to change the licensor to
17 Argyle which Wynn asserts is reason to believe that Francis
18 controls everything and everyone related to debtors in an
19 attempt to manage the assets of his company.

20 Undercutting Wynn's arguments, only slightly
21 though, on this point, is Francis's seeming nonchalance in
22 response to Direct TV's reluctance to accept the amended
23 license agreement.

24 If Francis were determined to divert assets at
25 that time, it seems likely he would have made more of an

1 effort to persuade Direct TV on this point.

2 Although debtors argue that Dale is now the
3 manager of the debtors and Francis purportedly has no actual
4 power or control over the GGW entities, the Court finds that
5 such an assertion is not credible.

6 It is true that Dale now claims to be the manager
7 of Pablo Holdings. However, the timing of Dale's promotion
8 and his independence are questionable. The Court notes that
9 Dale was purportedly promoted to manager of Pablo Holdings
10 in late October, early November, which was approximately the
11 same time as the Wynn -- as Wynn filed its motion for
12 appointment of a limited receiver in the California judgment
13 litigation.

14 Further, the Court has serious concerns regarding
15 Dale's ability to manage the GGW entities. It's undisputed
16 that Dale was debtors' human resources manager at least
17 until August 29, 2012 and he concedes that at that time, his
18 knowledge of and authority over debtors was extremely
19 limited.

20 By late October, early November, Dale had been
21 elevated by Asia Trust Limited as trustee of the Ridgewood
22 Trust to purportedly manage Pablo Holdings and therefore
23 debtors.

24 He at that point was then responsible for what Mr.
25 Yaspan claims were 13 employees and at least 22 independent

1 contractors and a multimillion-dollar brand.

2 Debtors submitted Dale's declaration in support of
3 their opposition and they certainly could have provided
4 information regarding Dale's education, background and
5 experience that could have substantiated that he has the
6 knowledge, ability and background to manage debtors.

7 Debtors did not provide this information or about
8 the controller, the letter of whom debtors claim has years
9 of experience as a controller. The lack of information
10 submitted by debtors on the important issue of the
11 experience of their management team is significant.

12 Additionally, as the Court noted during the 341(a)
13 meeting of creditors, Dale appeared and testified on behalf
14 of debtors. Dale testified that he works approximately four
15 to five hours per week for the GGW entities and he is
16 currently working for an unrelated entity called Movie Clips
17 as an HR manager.

18 Although Dale testified he is the decision maker
19 for the GGW entities, he admitted relying on the department
20 heads to make day-to-day operating decisions.

21 Although Dale claims that Francis no longer has
22 any control over debtors, the Court does not believe this to
23 be true. Debtors' explanation of GGW Direct's \$65,000
24 payment to Kiki Entertainment that was made on 2/7/13, which
25 coincided with the date that the GGW entities filed for

1 bankruptcy, demonstrates that Francis still controls
2 debtors.

3 According to Tim, the \$65,000 payment from GGW
4 Direct to Kiki Entertainment occurred because Perfect
5 Science Labs needed to wire funds from its account but did
6 not have the ability to do so; therefore, GGW Direct agreed
7 that Perfect Science Labs could transfer money from its
8 account and then GGW Direct would forward the money to Kiki
9 Entertainment.

10 What Tim did not state is that Francis is the
11 manager of Perfect Science Labs and that evidence is
12 contained in the Langberg declaration, Exhibit 6 and Exhibit
13 D, the second Langberg declaration.

14 And even though Mr. Tim claims that the payment to
15 Kiki Entertainment was on behalf of Perfect Science Labs,
16 the evidence submitted to support this contention
17 demonstrates that Argyle Online, rather than Perfect Science
18 Labs, transferred \$65,000 into GGW Direct's account.

19 Additionally, the evidence related to the
20 \$274,250.52 payments made to Argyle Online within a week of
21 the GGW cases being filed also raises significant concerns
22 with the Court.

23 On February 19, 2013, GGW Direct reported paying
24 Argyle a total of \$214,250.52. Approximately a week later,
25 on 2/25 Argyle Online as the, quote, U.S. representative of

1 Path Media was paid an additional \$60,000 and then executed
2 a 95-day lease agreement for a total of 274,250.52 for the
3 use of the GW trademarks.

4 The Tim 4/5 declaration and the 2/25 agreement
5 between Path Media and GW Direct that purportedly
6 demonstrates the basis for the almost \$275,000 payment
7 appears strange to the Court for a number of reasons.

8 First, the agreement just happened to be dated two
9 days before debtors filed for bankruptcy, and it was for a
10 90-day period. There was no explanation why the agreement
11 is for such an odd number of days.

12 Second, even if it were a valid agreement, which
13 the Court is not convinced it is, the 274,250.52 amount of
14 the agreement is odd and it is exactly the same amount as
15 the total of the three payments that GW Direct made within
16 a week of filing bankruptcy.

17 Finally, the agreement states explicitly that the
18 effective date was 2/25/13, which was the date of the last
19 \$60,000 payment to Argyle. GW Direct, however, had paid
20 Argyle a total of more than \$214,000 a week before, on
21 February 19, 2013.

22 Therefore, the payments made on February 19th
23 raise issues regarding whether debtors as fiduciaries should
24 pursue a possible fraudulent conveyance or preference action
25 against Path Media and/or Argyle Online to recover these

1 payments.

2 It is undisputed that Path Media is owned by
3 Ridgewood Trust, the sole member of Pablo Holdings and In re
4 Pitt Penn Holding Company, 484 B.R. 25, Bankruptcy, the
5 District of Delaware, 2012, stated that a close relationship
6 between the transferor and transferee is one of the badges
7 of fraud for purposes of determining whether a transfer is
8 fraudulent under section 540(a).

9 Finally, debtors' repeated assertions that the
10 trustee of the trust, and not Francis, controls debtors is
11 not true. The Pablo operating agreement reveals that the
12 manager of Pablo Holdings, Francis and then Dale late
13 October, early November, and not its member Asia Trust
14 Limited, the trustee of Ridgewood Global Trust, is vested
15 with expansive control and power over Pablo and therefore
16 over debtors.

17 Section 9 of the Pablo operating agreement again
18 states that all management powers over Pablo are and shall
19 be exclusively vested in the manager and the member shall
20 not have any right to participate in any exercise, control
21 of management power or over the business and affairs of the
22 company.

23 As noted above, the Pablo agreement then lists
24 numerous functions of the manager demonstrating that the
25 manager, and definitely not the member, has unlimited

1 discretion regarding the management of Pablo.

2 In light of this unambiguous language in the Pablo
3 operating agreement, it's clear that the debtors continued
4 statement that the trustee of the trust, and not Francis,
5 has control over debtors is absolutely not true, despite
6 debtors' claim, Ridgewood Trust, as a member of Pablo has no
7 power over that entity.

8 As a result, Ridgewood Trust has no power over
9 debtors which are controlled by Pablo. Control over Pablo,
10 and therefore control over debtors was vested exclusively in
11 the manager of Pablo.

12 According to Dale, he was elevated -- and that's a
13 direct quote from his declaration -- by Asia Trust Limited,
14 as trustee of the Ridgewood Global Trust, to be manager of
15 Pablo. Again, Dale doesn't state exactly when that
16 occurred.

17 And, as I mentioned previously during the 341(a)
18 meeting, he had mentioned that he had not applied for the
19 manager position and that he learned about his appointment
20 during a telephone call from Robert Tim, who is representing
21 debtors and who has filed a number of declarations before
22 this Court.

23 On January 28, 2013, Dale signed a declaration in
24 which he stated that he was custodian of records of Pablo
25 Holdings and the GGW entities. And that declaration was

1 Exhibit C to the second Langberg declaration that was filed
2 with the reply.

3 Attached to the declaration were copies of
4 operating agreements for the GGW entities as well as the
5 Pablo operating agreement.

6 Exhibit D-1 to Dale's January 28, 2013 declaration
7 is an amended and restated operating agreement of GGW
8 Brands, a Delaware limited liability company.

9 That operating agreement indicates that it was
10 amended and restated on February 19th and that the business
11 affairs of GGW Brands shall be managed by a board of
12 managers consisting of one manager appointed by the sole
13 member. The initial manager shall be Christopher Dale and
14 the manager may be replaced at any time by the member, which
15 is defined as Pablo later in the agreement.

16 On the last page under the word "Member," which is
17 listed as Pablo Holdings, there is a stamp that states "ATP
18 Directors Limited by its duly authorized officer," and there
19 are signatures of Angela Pope and Lynette -- and her last
20 name is illegible.

21 The problem with the GGW amended operating
22 agreement is that pursuant to the Pablo operating agreement,
23 the manager of Pablo was in exclusive, complete control over
24 Pablo. Therefore, it appears that the GGW operating
25 agreement might not be a valid effected document because it

1 was signed on behalf of Pablo Holdings by non-manager
2 parties.

3 The Court recognizes that even if Francis was
4 guilty of fraud, dishonesty, incompetence or gross
5 mismanagement, that does not necessarily mean that there is
6 cause and that a trustee must be appointed -- and that a
7 trustee doesn't have to be appointed if the Court is
8 satisfied that current management is free from the taint of
9 prior management.

10 As noted above, the evidence is not sufficient for
11 the Court to be satisfied that debtors' current management
12 is competent to be managing the debtors or that they are
13 acting independently.

14 Although the evidence is insufficient for this
15 Court to untangle the intricate web of interrelated
16 companies in this case, it's abundantly clear that all of
17 the interrelated companies are somehow related to Francis
18 and are controlled by him or someone acting on his behalf.

19 Therefore, the Court finds there is cause to
20 appoint a trustee under 1104(a).

21 Turning to -- that was 1104(a)(1).

22 Turning to 1104(a)(2), Wynn contends that
23 appointment of a trustee is warranted under (a)(2) because,
24 quote, "A trustee is essential to remedy the vacuum created
25 by debtors' abdication of control to Francis and the

1 resulting self-dealing."

2 The debtors do not exist independently from
3 Francis and cannot be trusted to do anything other than what
4 is in the best interest of Francis.

5 No rehabilitation is in prospect for which any
6 management expertise would be required, and in light of the
7 puppet managers installed by Francis, it appears that the
8 debtors' management would lack the knowledge and expertise
9 to lead to any such rehabilitation.

10 Wynn cites several cases to support its view that
11 under 1104(a)(2) the court employs a flexible standard and
12 courts consider several factors when determining whether to
13 appoint a trustee.

14 Debtors counter that appointment of a trustee
15 would be contrary to the interests of creditors because
16 debtors intend to pay all legitimate claims in full, debtors
17 are being professionally managed with an accounting staff
18 and experienced controller, and appointment of a trustee
19 would quickly cause the economic collapse of the GGW
20 entities since they will lose their right to use the Girls
21 Gone Wild brand.

22 And a trustee would not have the same motivation
23 as the debtors' management to reorganize the business and
24 preserve its enterprise value.

25 Debtors cite two cases for the proposition that

1 deciding whether to appoint a trustee pursuant to section
2 1104(a) is essentially a cost benefit analysis. And debtors
3 assert that the factors listed above illustrate that the
4 cost of appointing a trustee outweigh the benefits.

5 Both Wynn and debtors frame the same legal
6 standard in slightly different terms. As noted above, when
7 determining whether to appoint a trustee under 1104(a)(2),
8 the standard is flexible and courts examine the four factors
9 that I previously mentioned.

10 Further, as noted above, even if current
11 management is competent and honest, appointment of a trustee
12 may be warranted if management was recently appointed but
13 does not have the expertise that an exceptional trustee
14 would have in reorganizing the debtor.

15 In terms of trustworthiness of debtors. The
16 essence of Wynn's argument is that debtors cannot be
17 trusted. In Wynn's view, current management is merely a
18 puppet who is controlled by Francis and after Wynn took
19 steps to collect from the GGW entities, debtors' management
20 structure was changed to avoid impending court orders.

21 Wynn argues that debtors do not exist
22 independently from Francis and cannot be trusted to do
23 anything other than what is in the best interest of Francis.

24 Debtors acknowledge that Francis still has a role
25 with debtors as a consultant but maintain he has no actual

1 power or control over the GGW entities. That assertion is
2 belied by Francis's relationship with Path Media.

3 Debtors assert that if a trustee were appointed,
4 the GGW entities would face, quote, economic death, end
5 quote, because Path Media, an allegedly unaffiliated
6 company, would purportedly not renew an intellectual
7 property license that exists between Path Media and debtors.

8 Contrary to debtors' assertion, the evidence
9 demonstrates that Path is owned by Ridgewood Trust which was
10 settled by Francis and therefore is not an unaffiliated
11 company.

12 Path Media obtained the IP rights which debtor
13 believes to be incredibly valuable because Path Media's
14 failure to renew those rights would result in debtors'
15 economic death for no consideration. That was from Kluger's
16 deposition.

17 Through his control over Path Media and its
18 exceedingly valuable IP rights, Francis exercises complete
19 control over debtors. Debtors' assertion that Francis
20 exercises no power or control over debtors therefore rests
21 on shaky ground, undermining debtors' credibility.

22 Further, the fact that debtors chose to
23 characterize Path Media as an unaffiliated company also
24 seriously undercuts debtors' trustworthiness.

25 Debtors' trustworthiness is also called into

1 question by their representations and filings before this
2 Court regarding who controls debtors.

3 The GGW entities' assertion that the trustee of
4 the trust and not Francis purportedly had ultimate say
5 regarding the management of the companies is not true, as
6 analyzed above.

7 Control over Pablo Holdings, and therefore control
8 over debtors, was and continues to be vested in the manager
9 of Pablo Holdings.

10 Although debtors claim that Dale is now in charge,
11 the Pablo operating agreement and the evidence related to
12 transfers, both into and out of the GGW entities' bank
13 accounts a few days before filing, support Wynn's contention
14 that Dale is a figurehead.

15 Further supporting that contention is the fact
16 that Dale only works four to five hours a week for debtors,
17 has outside employment and he leaves day-to-day management
18 decisions to managers who were not named and identified and
19 their credentials are not known to the Court.

20 Further, the fact that Dale is now purportedly
21 Pablo Holdings' manager does not engender an increase in the
22 debtors' trustworthiness. It is difficult for the Court to
23 believe that Dale, who in August of 2012 was a human
24 resources manager and who knew little about debtors, is now
25 running a multimillion-dollar brand.

1 As mentioned Dale admitted working only four to
2 five hours a week and he leaves others to make the day-to-
3 day decisions.

4 Debtors' misrepresentation to this Court about
5 Pablo Holdings' true organizational structure as well as
6 significant questionable payments debtors made a few days
7 before filing for bankruptcy and the fact that debtors were
8 not able to produce a large, over 50,000 bill that was
9 purportedly for legal services, calls into question the
10 trustworthiness of debtors and weighs heavily in favor of
11 appointing a trustee.

12 In terms of debtors' past and present performance
13 and their prospects for rehabilitation, the Court has very
14 little information about debtors' past and present
15 performance.

16 The Court notes that even though the cases were
17 filed and debtors claim that they have continued to operate
18 their business during the administrative period and have
19 even noticed an uptake in sales due to the publicity
20 surrounding the filing of the cases, the Court doesn't have
21 any information regarding the specifics of the debtors'
22 business.

23 I did review the initial status report that was
24 filed by debtors' counsel. It does not provide any level of
25 detail regarding the debtors' business.

1 Further, the Court notes that debtors did not file
2 the typical, quote, first day, end quote, motions that are
3 filed in most corporate Chapter 11 cases.

4 For example, debtors did not seek authority to pay
5 pre-petition payroll even though they claim they employ --
6 now, they claim 13 employees. I believe in one pleading it
7 said they had 17 employees and numerous independent
8 contractors.

9 Additionally, debtors did not file a motion
10 deeming the utilities to be adequately assured of future
11 performance pursuant to 11 U.S.C. section 366. Therefore,
12 debtors' electricity, water or other utilities could be
13 terminated without warning at this point if debtors were
14 behind on their payments.

15 Debtors have also, as noted, not timely filed
16 monthly operating reports, although Mr. Yaspan mentioned
17 that there was a monthly operating report filed last
18 evening.

19 Therefore, the Court does not have any information
20 regarding the debtors' performance. The fact that
21 \$2,000,000 in funds belonging to GGW Brands and/or Direct
22 were frozen by court injunction sometime in 2012 is not
23 encouraging.

24 Although Dale, the person who claims to currently
25 be in charge of debtor, states that debtor is currently a

1 profitable business that is paying its bills and meeting its
2 obligations, it is difficult to believe this given that Dale
3 only works four to five hours a week.

4 Further, GGW Direct allowed Perfect Science Labs
5 and/or Argyle Online to use their account to transfer funds
6 the day that the bankruptcy was filed.

7 And little more than a month before debtors filed
8 for bankruptcy, GGW Direct paid Perfect Science Labs'
9 American Express bill that was issued in the name of Perfect
10 Science Labs and Joe Francis. It is undisputed that Francis
11 is the manager of Perfect Science Labs.

12 As I mentioned, debtors were not able to provide a
13 copy of a 53,000 invoice or bill for a payment made to the
14 attorney who Mr. Tim claims is an attorney representing
15 debtors in a Mexico litigation. Although the reason for
16 allowing these transfer of payments is unknown and maybe
17 questionable, it does demonstrate that debtors do not have
18 appropriate internal controls in place.

19 Therefore, this factor weighs in favor of
20 appointing a trustee.

21 In terms of the level of confidence of the
22 business community and creditors in current management, it
23 is clear that Wynn obviously does not have any confidence in
24 debtors' current management. And also debtors dispute
25 Wynn's claim, Wynn is by far debtors' largest creditor.

1 Debtors allege the current management consists of
2 Dale as lead executive and that debtors are being
3 professionally managed with an accounting staff and
4 experienced controller. Debtors acknowledge that Francis
5 still has a role as a consultant.

6 Regarding Dale, the Court, as mentioned, has no
7 information about his background, expertise or any other
8 information that would give the Court confidence that he
9 would be able to manage debtors.

10 Likewise, there's no evidence demonstrating how
11 the business community as a whole is likely to view Dale.
12 He was an HR manager until sometime at the end of October,
13 early November. He is also now an HR manager for an
14 unrelated company.

15 Dale appears to have risen in the ranks quite
16 quickly and there's no evidence demonstrating his education,
17 business skills or acumen and/or managerial skills. In
18 fact, Dale's testimony during the 341(a) meeting supports
19 Wynn's and the Court's lack of confidence in Dale to manage
20 debtors.

21 The Court also has no information about any other
22 managers of debtors other than Dale's conclusory statement
23 that the controller has years of experience as controller of
24 companies.

25 On balance, the Court finds that this factor

1 weighs in favor of appointing a trustee.

2 Finally, benefits of appointment balanced against
3 costs.

4 If the Court appoints a Chapter 11 trustee, many
5 of the concerns regarding transparency and Francis's level
6 of control would be alleviated. A trustee would not have
7 any conflicts of interest that would prevent him or her from
8 pursuing possible claims for fraudulent transfers and/or
9 preferences.

10 Debtors' current management, on the other hand,
11 would be less likely to pursue such claims because of their
12 previous personal and professional relationships with
13 transferees.

14 A similar concern was before the court in In re
15 Microwave Products of America, Inc., 102 B.R. 666. There,
16 the court found that appointment of a trustee would be in
17 the best interests of the creditors, in part because of the
18 existence of several transactions that the court saw as
19 questionable, including questionable accountings regarding a
20 \$5,000,000 promissory note.

21 A director claimed to have sold the note at a
22 discounted price to a company owned by the director.
23 However, after the date of the supposed sale, the note was
24 still on debtor's books as a \$5,000,000 asset.

25 The CFO sought direction from the board of

1 directors regarding this transaction, but the board did not
2 advise him on how to reflect the transaction on the debtor's
3 books.

4 The court noted that because the debtor is not in
5 a strong posture to pursue possible claims that may have
6 resulted from conflicts of interest and fraudulent
7 transfers, a trustee would likely be able to investigate
8 claims that could result in additional sums of money coming
9 into the estate.

10 The court also stated that because of the erosion
11 of confidence in the debtor, there is likely to be increased
12 litigation which will result in escalating legal costs to
13 the estate.

14 Many of the same concerns are present here.
15 Debtors have engaged in questionable transactions with
16 insiders, and current management would not have an incentive
17 to attempt to pursue possible fraudulent transfer or
18 preference claims.

19 Debtors here are also embroiled in litigation
20 which is likely to lead to more litigation costs to the
21 estate.

22 Debtors contend that if a trustee is appointed,
23 Path Media would not renew IP licenses with debtors that are
24 crucial to their business. This assertion is questionable,
25 and even if it were true, there is no explanation why a

1 trustee would not be able to secure use of such rights.

2 Although a trustee will need time to familiarize
3 him or herself with the debtors' business, as noted Dale,
4 who is purportedly in charge of debtors, only assumed his
5 current position, at the latest, early November.

6 He has outside employment at an unrelated company
7 and he only works four to five hours per week for debtors.
8 He also leaves day-to-day operations to unnamed department
9 heads.

10 There was also no evidence demonstrating that
11 Dale, even if he worked full-time for debtors, would have
12 the knowledge, experience or expertise to manage debtors
13 successfully.

14 As analyzed above, on balance, the Court finds
15 that appointment of a Chapter 11 trustee would be in the
16 best interests of the creditors pursuant to 1104(a)(2).

17 So that concludes the hearing.

18 Ms. Law, in terms --

19 I guess it's -- Wynn needs to upload an order and
20 the order -- it's not going to be, oh, my goodness a two-
21 hour order. It's going to be about three lines, which will
22 be for the reasons stated on the record.

23 And can you get that uploaded today?

24 MR. PAGAY: Yes, your Honor, I can. I was hoping
25 you'd say that I could just refer to the record.

1 be that they were all treated as one entity and the Court is
2 appointing a trustee in all four cases.

3 MR. YASPAN: Thank you.

4 THE COURT: Thank you.

5 Is there anything further?

6 Okay. That concludes the hearing. Off the
7 record.

8 (Proceedings concluded.)
9
10

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.
14

15 /s/ Holly Martens
16 Transcriber

4-15-13
Date